SOON SEH KIONG

v.

MAT LAWI HJ. BAHARUDIN

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[CIVIL SUIT NO. 325 OF 1982]
20 JULY 1988

TORT: *Damages for loss of expectation of life - Future earnings pursuant to s. 8 Civil Law Act - Funeral expenses.*

The plaintiff is the husband of the deceased and sues as administrator for damages for loss of expectation of life, loss of future earnings pursuant to s. 8 Civil Law Act 1956 and funeral expenses.

Liability had been admitted by the defendant and it was agreed that damages for loss of expectation of life be at RM5,500 funeral expenses at RM1,000 and costs of obtaining Letters of Administration in respect of the deceased estate at RM750.

It was further agreed that the period of pre-trial loss be at 112 months and the multiplier for post trial loss be at 12 years.

Evidence was accepted that if the deceased had been alive she would have reached the maximum salary scale as a rubber tapper working for RRIM and that the maximum salary she would have obtained would be at RM420 per month from 1983 onwards and that prior to that date her salary as a daily paid worker would be in the region of RM250 per month. The Court also accepted evidence that during the period where she was a daily paid worker she would have expended the sum of RM150 per month on herself and subsequently when she became a monthly paid worker she would have expended a sum of RM250 per month.

Held:
That the following awards would be made:

[1] Pre-trial loss for the period 10 December 1978 to 31 May 1982 at RM150 per month with interest at 4% from date of accident to the date of judgment.

[2] Pre-trial loss for the period from 1 June 1982 to 19 July 1988 at RM250 per month with interest thereon at the rate of 4% per annum from 1 June 1982 to date of judgment.

[3] Post-trial loss for 12 years according to the annuity tables amounting to RM26,600.

[4] Damages for loss of expectation of life agreed at RM5,500 with interest at the rate of 8% per annum from the date of service of writ to the date of judgment.

[5] Funeral expenses at RM1,000 and cost of obtaining letters of Administration at RM750 together with interest thereon at the rate of 4% per annum from the date of accident to the date of judgment.

[Plaintiff entitled to costs of the suit to be taxed unless agreed upon.]

Case referred to:
Gammell v. Wilson & Ors. [1981] All ER 578

Legislation referred to:
Civil Law Act 1956, s. 8

JUDGMENT

LC Vohrah J:

The plaintiff is the husband of the deceased and sues as administrator of the deceased's estate for:

a) damages for loss of expectation of life;

b) future earnings pursuant to s. 8 of the Civil Law Act 1956 in respect of the deceased's death; and

c) funeral expenses.

Liability has been admitted by the defence and agreement has been reaches by the parties as follows:

a) Damages for loss of expectation of life - RM5,500

b) Funeral expenses - RM1,000

c) Cost of obtaining letters of administration in respect of the deceased's estate - RM750;

d) Period of pre-trial loss - 112 months; and

e) Multiplier for post trial loss - 12 years.

Only two witnesses were called to give evidence at this trial and both of them on behalf of the plaintiff. The first witness was a female rubber tapper working for the Rubber Research Institute of Malaysia (RRIM) who testified that at the time of the hearing she was drawing the maximum salary possible. She also said that at the time of the deceased's death on 10 December 1978 she had been a daily-paid rubber tapper with RRIM for 5 years whilst the deceased for 7 years. She further stated that in 1983, after negotations arising from strike action, the workers became monthly-paid wage-earners. I accept her evidence on all these points. From her evidence it is clear that had the deceased been alive she too would have reached the maximum of the salary scale. From the first witness's pay slip that has been furnished by Counsel for the plaintiff and accepted by Counsel for the defendant showing the maximum salary she was drawing in April 1988 as RM420 I would put the deceased's maximum salary also at RM420.

The second witness was the plaintiff himself and I have no reason not to accept his evidence that when the deceased was working she had only two meals at home, i.e., lunch and dinner, and that he provided all the household expenses. I also accept his evidence that at the time of her death he was earning RM1,000 as a saw-mill supervisor whilst the deceased was a daily-paid worker earning a total monthly wage in the region of RM250. This figure of RM250 would seem to be borne out by the letter 'AD' from RRIM, an agreed document, which showed that for the 2 normal months when she worked an average of 22 days (prior to the period when she must have been very busy preparing for her marriage which took place shortly before her death) she earned an average monthly wage of RM238 and a monthly housing allowance of RM25.

In the light of the oral and documentary evidence produced, I consider on a balance of probabilities that the deceased at the time of her death would have been drawing an average monthly income of RM250 and in 1983 like the first witness the maximum monthly salary of RM420. I estimate that she would have expended a sum of RM100 per month on herself in the early stages of her working life and substantially more when her income increased so

that the loss suffered by the deceased in her lifetime, in the context of the principal enunciated in *Gammell v. Wilson & Ors.* [1981] All ER 578, would have been RM150 per month during the period when she was a worker paid on a daily basis and RM250 per month when she became a worker whose salary was computed on a monthly basis. It has been argued by Counsel for the plaintiff that because of the legislation relating to the Employees Provident Fund the employer's contribution should have been added on to the loss that has been suffered by the estate. In the same way, I think, it can also be argued that the figure arrived at as the loss can be decreased by the amount the deceased would have had to pay out as her own contribution so that these two contributions cancel each other out. I do however accept the argument of Counsel for the plaintiff that the period of pre-trial loss should be considered into two parts, one for the period when she was drawing income on the daily-paid basis and the other on the monthly-paid basis to take into account the disparity in the multiplicands. As the deceased would have been treated as a monthly-paid wage-earner after her 10th year of employment, I think it fair and reasonable to apply the multiplic and of RM250 after 1 June 1982. I would also apply the same multiplicand for the agreed post-trial period of 12 years. In the result I make the following awards:

1) Pre-trial loss for the period 10 December 1978 to 31 May 1982, a period of approximately 41½ months (RM150 x 41½)
2) Pre-trial loss for the period 1 June 1982 to 19 July 1988, the remaining period of approximately 70½ months (RM250 x 70½)
3) Post trial loss for 12 years (according to the Annuity Table)
4) Damages for loss of expectation of life
5) Funeral Expenses
6) Cost of obtaining letters of administration in respect of the deceased's estate

The plaintiff will be entitled to the costs of the suit which will be taxed unless agreed upon.

Also found at [1988] 2 CLJ 850